

TABLE OF CONTENTS

★ CHAPTER 25 QUESTIONABLE AND FRAUDULENT CLAIMS

★2501 Advance Decisions

2502 False, Fictitious, or Fraudulent Claims

★2503 Claims Against the Government

CHAPTER 25

★ QUESTIONABLE AND FRAUDULENT CLAIMS★2501 ADVANCE DECISIONS

250101. Claims. Any claim presented for certification or payment that the certifying officer or DO believes to be illegal or improper should not be certified or paid. This section identifies the authority available to the certifying officer or DO to refuse to make such certifications or payments and the procedures to follow when such refusal becomes necessary. Refusal to make certification or payment is an undesirable procedure when it is based solely upon lack of knowledge or the unwillingness to ascertain the proper course of action from the proper authority.

250102. Application for Decision

★ A. Authority. Under Title 31, United States Code, section 3529, (reference (e)), a certifying officer or a DO may request an advance decision on the propriety of any prospective payment. Appendix E provides the offices responsible for issuing the advance decisions. This statute does not provide for the rendering of decisions on questions of law pertaining to payments that have already been made or upon hypothetical cases.

★ B. Content. The statute requiring an advance decision be rendered contemplates a presentation to the Comptroller General or any other official authorized (see appendix E) to issue an advance decision under 31 U.S.C. 3529 (reference (e)) when the question is one of law, of all the material facts necessary for its determination. When the question is one of fact, it contemplates a presentation of all the material evidence obtainable by the officer making the request. The specific point upon which the decision is desired and the reason for requesting the decision shall be stated. The document in question, appropriately certified, shall be made an enclosure to the request. As a general rule, decisions are rendered only when the request is accompanied by a specific claim or voucher (legible copies are acceptable).

★ C. Forwarding of Requests. Requests for advance decisions regarding military members' pay, allowances, travel, transportation, retired pay and survivor benefits through the requesting certifying or disbursing officer's chain of command, the servicing DFAS Center, and DFAS General Counsel. DOs and certifying officers under the cognizance of the DFAS-Columbus Center shall submit their requests through their chain of command and the Columbus Center, regardless of the applicable DSSN assigned. Prior to forwarding a request to DFAS General Counsel, Center Directors shall ensure the case file includes the legal review mandated by DFAS Regulation 005 (reference (am)). Requests for advance decisions for other disbursements must be submitted through the chain of command to the appropriate office as outlined in appendix E.

★ 250103. DFAS Actions. Cases involving entitlement questions that clearly appear to have been authoritatively decided may be returned to requestors by the DFAS Centers or by DFAS General Counsel with advice that an advance decision is not necessary. An entitlement interpretation from anyone other than the sources identified in appendix E, however, does not remove pecuniary liability for illegal, incorrect, or improper payments. Therefore, DFAS Center and DFAS General Counsel responses shall indicate the advisory nature of their responses and shall advise requestors that resubmission may be made through the servicing DFAS Center. Certifying officers and DOs may rely on written decisions from the DFAS Centers, authorized by DFAS Regulation 005 reference (am), to settle cases of \$100 or less on the uses of appropriated funds. Decisions rendered under this procedure will be considered as conclusive in the settlement of accounts. A copy of the memorandum containing such a decision shall be attached to the voucher.

★ 250104. Decisions Rendered

★ A. Payment in Question. An advance decision is conclusive only as to the particular payment involved in the question presented. A statement made by the responsible office in an advance decision upon a statement of facts submitted, which is broader than the stated facts rendered necessary, is not binding in the settlement of the accounts.

★ B. Affecting Other Payments. An advance decision rendered in a particular case takes effect from its date, but the principles enunciated in decisions of the responsible office are applicable to all cases arising under the statutes, whether occurring before or after the date of the decision. A new construction of the law, contrary to former rulings, applies to disbursements and computations made subsequent to the date of such decision, or to the date of receipt of notice of such decision, provided reasonable diligence was exercised to obtain notice.

2502 FALSE, FICTITIOUS, OR FRAUDULENT CLAIMS

250201. Determination of Fraud. It is difficult to prescribe exact rules for determining the existence of fraud or misrepresentation, since the question of whether fraud exists depends on the facts in each case. Although it is the claimant's responsibility to complete a claim accurately in order to ensure proper payment, it may not be assumed automatically that the claim is fraudulent simply because it is not prepared according to the requirements of publications such as the Joint Federal Travel Regulations or the Joint Travel Regulations.

A. Many innocent mistakes are made in the completion of claims, and not every inaccuracy on a claim form should be equated with an intent to defraud the government. Where discrepancies are minor, small in total dollar amounts, or where they are infrequently made, a finding of fraud normally would not be warranted, lacking the most convincing evidence to the contrary. However, such errors should be discussed with the claimant and corrected.

B. Where discrepancies are glaring, involve great sums of money, or are frequently made, a finding of fraud more readily could be made, lacking a satisfactory

explanation from the claimant. The DO, in ensuring the propriety of all payments made, is primarily responsible for determining the existence of fraud. For example, in 57 Comp. Gen. 664 (reference (an)), the Comptroller General ruled that, in connection with a claim for travel expenses containing items based on fraud, only those items free of fraud may be paid. Examples of individual items claimed on a single travel claim include transportation for each leg of travel performed at the traveler's expense, lodging expenses, and each miscellaneous expense incurred. Per diem allowance is divided into three separately distinct categories (lodging, meals, and incidental expenses). For any day on which a claimant submits a fraudulent lodging receipt, the claimant forfeits the lodging portion of the per diem allowance for the day or days that the lodging receipt represents. If a meal or an item of incidental expense for a particular day is fraudulently claimed, the meal or incidental allowance portion of per diem for that day shall be denied. Payment of per diem allowances for other days that are not supported by a fraudulent lodging receipt, or for other expenses not tainted by fraud, may be made. This rule applies whether per diem is computed on an actual expense basis or under the lodging plus a fixed fee basis. The average cost of lodging, when applicable, shall be computed by assigning a value of zero to those days for which a fraudulent lodging receipt is submitted. The pro rata share of per diem for the day of return from travel shall be computed on the same basis. When making final settlement on a travel claim, for which partial payments have been made on the basis of fraud, the amount of earned entitlements for the entire period of travel shall be computed by disallowing any items based on fraud. If the total entitlements thus computed are less than the amounts previously paid, the difference shall be recouped from the claimant. Similar procedures shall be followed upon final settlement of travel claims on which advances have been paid. If, after disallowing all fraudulent items, the remaining entitlement is less than the amount of the advance, the excess advance shall be recouped.

★ 250202. Required Action When a Suspected Fraudulent Claim is Presented for Payment. When there is reason to suspect that a claim presented for payment contains fraudulent information, the DO shall request his or her commander to initiate an investigation into the suspected fraud. The requirement to request the commander to initiate an investigation applies regardless of the dollar value of the suspected fraud. Arrangements shall be made to provide the DO with a copy of the completed investigation. Unless otherwise directed by the investigating office, the DO shall retain the claim and all supporting documentation for possible use in any disciplinary action taken by the claimant's commander. An ultimate finding of fraud is not dependent upon legal or disciplinary action. Primary responsibility for that determination rests with the DO but only when concurred with by legal counsel.

A. If, in the opinion of the DO, the investigating office's report does not support a finding of fraud, payment shall be made for all amounts to which the claimant is entitled. No further action need be taken, but the DO should document the reasons for the determination. The DO may be called upon from time to time to furnish this documentation in order to provide an indication of whether the guidelines are being uniformly applied throughout the DoD.

B. If, in the opinion of the DO, the investigating office's report confirms that some items of the claim are fraudulent, payment of those items free of fraud may be made. Once payment has been made for that portion of the claim free of fraud, if the claimant then protests the determination of fraud and insists on payment of the entire claim, the claimant may submit a new claim for the items denied because of fraud. The DO shall process the reclaim for the items denied as prescribed in paragraph 250205, below.

250203. Required Action When It Is Discovered That a Fraudulent Claim Has Been Paid. If, after payment of a claim, the DO discovers or is provided information suggesting that a claim was paid based on fraudulent information or documents, the DO shall review the retained copy of the claim to determine whether the claim was tainted with fraud.

A. If the claim remains suspect, the DO shall request his or her commander to initiate an investigation. The requirement to request an investigation applies regardless of the dollar value of the suspected fraud and includes illegal, incorrect, or improper payments made as a result of issuing recertified payments where the payee negotiated both the original and the recertified check. Arrangements shall be made to provide the DO with a copy of the investigative report.

B. In accordance with the requirements of the GAO, a report by the DO shall be made to the servicing DFAS Center upon initial disclosure that an illegal, incorrect, or improper payment has been made on the basis of fraud. The report shall contain a basic statement of the irregularity, date, amount, and identification of the individual(s) involved. Upon completion of final action (recoupment, investigation, etc.), a second report shall be forwarded.

An ultimate finding of fraud is primarily the responsibility of the DO, who shall utilize the criteria in paragraph 250201, above, in making a decision. If, in the opinion of the DO, the report of investigation does not support a finding of fraud, repayment shall be made for all amounts recouped from the claimant, if otherwise entitled, and this information shall be included in the second report. If, in the opinion of the DO, the report of investigation confirms that some or all items of the claim are fraudulent, no repayment of those items recouped may be made and the second report shall contain a citation of the applicable contract number (or travel order number, etc.), voucher number, date of payment, appropriation charged, and a description of the supporting documentation; a description of how the fraud was committed; a description of procedural deficiencies in the disbursing office, if any, and the action taken to correct the deficiencies; and, information as to recoupment effected or contemplated from the recipient of the payment.

D. Except under unusual circumstances, reports shall not be classified or made in message form. No report is required if the fraud is detected prior to any payment being made. Should a claim in the form of a reclaim be received for any part or all of the amount recouped because of an illegal, incorrect, or improper payment of any voucher item obtained by fraud or misrepresentation, such reclaim shall not be settled by the DO, but shall be processed as

prescribed in paragraph 250205, below. In no case shall submission of the reclaim or recoupment of amounts paid be deferred pending final determination on the claim.

250204. Corrected Claims. When it is established, or it reasonably appears, that a claimant has submitted a fraudulent claim and, upon discovery of the fraud, the claimant submits a corrected claim for those items previously suspected of being fraudulent, this subsequent claim shall not be paid by the DO. However, if the claimant persists in having the claim processed, the claim shall be processed as prescribed in paragraph 250205, below.

★ 250205. Reclaims of Items Disallowed or Recouped Due to Fraud. The DO shall forward reclaims of items disallowed or recouped due to fraud to the appropriate responsible office as identified in Appendix E through the DO's chain of command. If the entire claim was denied, the original claim shall be submitted. The completed claim shall be accompanied by a covering letter or memorandum from the DO stating specific information as to why the claim is considered fraudulent, and the statement: "I have not made payment and will not make payment in the future unless authorized by competent authority"; the original and 2 copies of all supporting documents and the orders with all endorsements if travel is involved; a copy of the payment voucher on which payment was made for the items free of fraud, if applicable; a copy of the report of investigation; and a statement by the claimant supporting the claimant's belief that the claim is not fraudulent. A statement by the claimant's commander may be submitted at the option of the claimant. By endorsement to the DO's letter or memorandum, the DO's commander shall state an opinion on the case either in support of the DO or of the claimant.

250206. Accountability for Amounts Paid Due to Fraud. Most instances of fraud occur when a military member or civilian employee, whose identity clearly is established, submits a claim containing information known to be false. On some occasions, payments are made to individuals whose true identity cannot be determined. In some cases, a fictitious name is used by the individual committing the fraud. In other cases, the name of an actual military member or civilian employee may be used. In any of the above situations, an occurrence of this nature shall be reported and investigated as prescribed in Chapter 6 of this volume as an irregularity in the DO's account. The DO shall account for an irregularity caused by fraud, as appropriate, for the situations described in the following subparagraphs.

A. When the fraud is discovered prior to the submission of the monthly financial reports for the period during which the payment was made, the applicable voucher shall be reversed and withheld from the reports, and a loss of funds recorded in the DO's accountability (the DO still has the original payment document).

B. When the fraud is discovered after submission of the monthly financial reports which included the payment, the DO shall not adjust the accountability unless specifically directed to do so by the servicing DFAS Center.

★ 250207. Relief of Liability. Requests for relief of liability for illegal, incorrect, or improper payments caused by fraudulent claims shall be submitted as prescribed in Chapter 6 of this volume.

250208. Fraud Alert Reporting System

A. General. The Fraud Alert Reporting System is used only when an attempt to commit fraud has occurred or when a high vulnerability to fraud exists. Many of the incidents described in this paragraph are perpetrated by individuals who represent themselves as transient employees.

B. Action by DO. When it is determined that an employee is suspected of obtaining a fraudulent payment (pay, travel, or any other miscellaneous payment) by use of bogus documents and/or identification, DOs immediately shall notify the supporting DFAS Center by priority message. An information copy shall be forwarded to all the other DFAS Centers. A fraud alert report also is appropriate when a DO foresees a strong possibility of fraud being attempted by an unauthorized absentee who is knowledgeable in disbursing or pay and personnel matters. A fraud alert report shall describe the individual(s) involved in the fraud and details relating to the commission of the fraud with the expectation that this information will forewarn disbursing personnel and enable them to recognize fraudulent acts and, thereby, avoid losses. Reports of missing luggage, burglarized automobiles, and unauthorized absence of personnel in the lower pay grades usually have no value in preventing fraud. The following subparagraphs identify specifics that should be included in a fraud alert report.

1. Report fraudulent payments that have been made to anyone, especially transients, giving a description of the perpetrator, describing the type of documents used to establish fraudulent entitlement, explaining how the fraud was committed, and expressing an opinion on the likelihood of the perpetrator attempting future fraud. The description should include: name (plus known aliases); rank or rate; SSN; race; age; height; weight; color of eyes/hair; and, distinguishing characteristics and/or body marks.

2. Address the fraud alert report message only to the supporting DFAS Center with the other DFAS Centers as information addressees. Under no circumstances shall DOs address a fraud alert report to any activity other than the supporting DFAS Center.

3. Submit a fraud alert report for unauthorized absence of personnel only when the following three criteria are met.

a. The employee has possession of documents such as pay records, orders, vouchers, blank checks, etc., which could be used to obtain fraudulent payments.

b. The employee has knowledge of pay and personnel procedures necessary to commit a fraudulent act.

c. The employee has a motive to commit fraud (e.g., is facing disciplinary action, past history of substance abuse, presently encountering personal or financial problems, or past/suspected involvement in fraud or embezzlement).

C. Action by DFAS Center. Upon receipt and evaluation of the fraud alert report, the supporting DFAS Center shall issue a Fraud Alert Warning to all DOs. Fraud Alert Warnings should be retained by DOs for 1 year unless they are canceled by the issuing DFAS Center.

★2503 CLAIMS AGAINST THE GOVERNMENT

★ 250301. General. Title 31, United States Code, section 3702 (reference (e)), provides that any claim against the United States shall be forever barred unless such claim, bearing the signature and address of the claimant or an authorized agent or attorney is received by the responsible agency within 6 full years after the date such claim first accrued. This statute applies unless a claim is governed by a more specific statute which includes its own period of limitation for asserting claims against the Government.

★ 250302. Claims. The following offices have been designated as the responsible area to settle the following types of claims. Refer to appendix E for the proper address to submit claims.

A. The Defense Office of Hearings and Appeals (DOHA) has been designated as the office responsible for settling the following types of claims.

1. Military members' pay entitlements.
2. Military members' allowances.
3. Military members' travel.
4. Military members' transportation.
5. Survivor benefits.

6. Claims by transportation carriers involving amounts collected from them for damage or loss of property shipped at Government expense. Payments of claims to carriers for transportation services are further limited by 31 U.S.C. 3726 (reference (e)).

B. Claims of civilian DoD employees involving compensation or leave are handled by the Office of Personnel Management.

C. Claims involving travel, transportation or relocation expenses and allowances for civilians are the responsibility of the General Services Administration.

★ 250303. Claim Submission Procedures

A. General. All claims shall be submitted on an individual voucher basis through the use of the appropriate claim form. Each claim voucher shall identify the payee by name and either Social Security or Employer's Identification Number, as appropriate, and shall be supported by a claim over the signature and address of the claimant. When the entire amount due is recommended for setoff, the claim voucher may be submitted without a supporting claim. The claimant may state the claim directly on a dealer's bill or public voucher. Claim vouchers with supporting documents shall be submitted under a transmittal letter to the supporting DFAS Center. Vouchers covering claims chargeable to either lapsed or available appropriations shall be submitted in the original with sufficient copies for regular distribution. Claims for payments due deceased civilian employees shall be processed as prescribed in Volume 8 of this Regulation.

B. Voucher Preparation. The voucher shall contain: the name and current address of the claimant or assignee; the appropriation and other accounting data chargeable; a statement as to the purpose of the payment; a citation of the contract number, previous voucher payment(s), project order, and any other data required to process the voucher; an explanation of the difference when the recommended amount of payment is different from the amount claimed; and details regarding setoff as provided in subparagraph 250402.D, below.

C. Letter of Transmittal. The letter of transmittal shall include: a statement of facts surrounding the claim; the reason for forwarding the claim and an explanation of the doubtful aspects; a recommendation and the reason therefor or a statement that there is no specific recommendation and the reason no recommendation is made; and a statement that the DO has not paid and will not pay the claim until authorized to do so.

★ D. Setoff. In all cases involving setoff, an additional copy of the voucher shall be submitted. When it is recommended that an amount be allowed with a certain amount to be set off, the voucher shall show the amount recommended for setoff and the complete accounting data to be credited. A statement also shall be furnished showing the basis for the setoff in sufficient detail to permit adequate explanation to the claimant. If no recommendation can be made as to the amount to be set off, the amounts will be inserted on the voucher by the responsible settlement authority.

★ 250304. Review of Claims. The claims shall be reviewed by the supporting DFAS Center to determine that the claim is complete as prescribed in this section and that the claim is otherwise proper for submission to the responsible settlement authority. If submission of all or a major part of the claim to the responsible settlement authority is not required, the claim shall be returned to the submitting office with advice that all or a major portion of the claim be paid locally, a citation to the regulation(s) that authorizes or provides for such payment, and a statement, if applicable, that the doubtful portion of the claim should be resubmitted.

★ 250305. Payment of Claims After Approval by the Responsible Settlement Authority. Approved civilian or military pay claims shall be forwarded by the supporting DFAS Center to the appropriate office for payment. All other approved claims shall be paid by the supporting DFAS Center. Copies of vouchers covering approved claims paid against available appropriations shall be distributed in the same manner as other comparable vouchers. One copy of vouchers covering approved claims paid against successor appropriations shall be forwarded to the payee, one copy shall be forwarded to the office that administers the successor appropriation involved, and one copy shall be forwarded to the accountable activity.